IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.1720-SB of 2003

Date of Decision: November 13, 2007

Suresh

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Jitender Dhanda, Advocate,
for the appellant.

Mr.Yashwinder Singh, AAG, Haryana,
for the State.

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RANJIT SINGH, J.

Lust loaded appellant raped 12 years old girl. Consequence for him is ten years rigorous imprisonment after his conviction under Section 376 IPC. His appeal filed in 2003 is being heard now when he has undergone five and half years of the

sentence awarded to him.

The appellant was working as labourer at a brick-kiln and so was the occupation of father of the prosecutrix Inder Bhagat-complainant, who was also labourer at the said brick-kiln. The brick-kiln is owned by Subhash & Company. The appellant and the complainant were both temporarily residing at the said brick-kiln. On 10.6.2002, like any other day, the complainant had gone to sleep in his hut. His two daughters, Punia aged six years and the prosecutrix Kamli (PW-6), aged twelve years slept in the open outside the hut. In the morning of 11.6.2002, the complainant found his daughter Kamli missing. He doubted the appellant to have enticed away his daughter. When complainant could not succeed in tracing his daughter, he lodged a formal complaint before Dayanand ASI. At that time, the ASI was present at Sidhwan Naka, within the revenue estate of Hansi in connection with patrolling duty. The police conducted search for the missing girl and ultimately recovered her from the possession of the appellant. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. She was subjected to medical examination. MLR is placed on record as Exh.PC. The appellant was also medically examined and his MLR is Exh.PE. On completion of investigation, the challan was presented against the appellant for offences under Sections 376/366/363 IPC.

The appellant pleads that he is falsely implicated at the instance of the brick-kiln owner. His case further is that this false case was registered against him as the brick-kiln owner owed him some money, which he demanded and on that count this false case is foisted on him.

The learned counsel appearing for the appellant would mainly contend that from the evidence led by the prosecution, the allegations of rape are not fully established. He further submits that the appellant is falsely implicated in this case. On the other hand, the learned State counsel would say that the case of prosecution is well supported by the evidence of the complainant as well as the prosecutrix. As per the State counsel, there is not much dispute about the age of prosecutrix and as such there is no infirmity seen or noticed in the prosecution evidence, which may require any interference in this appeal.

The case of the prosecution is supported by the evidence of complainant Inder Bhagat (PW-7) and prosecutrix Kamli (PW-6). There is no dispute between the parties that appellant as well as the complainant were both working at the brick-kiln. The evidence clearly shows that prosecutrix was found missing on the morning of 11.6.2002. The complainant-father searched for his daughter and when he did not find her anywhere, he lodged a formal complaint with the police leading to registration of the FIR. These facts would clearly emerge from the evidence of the complainant (PW-7). He was cross-examined in detail, but nothing substantial could be extracted from him by the defence. The prosecutrix appeared as PW-6 and clearly deposed about the manner in which she was forcibly taken by the appellant while she was sleeping outside her residential hut. She has also given clear evidence about she having been subjected to forcible sexual intercourse without her consent. The first sexual act, according to her, was performed in the vicinity of the brick-kiln. Her evidence would show that she was enticed and taken away to

various places and ultimately was taken to Sardool Garh. As per her version, she was subjected to rape during this period on number of other occasions. Her version would seek support from the evidence of PW-2 Dr.S.P.Malik, who had conducted her medical examination. Since the prosecutrix had remained in the company of the appellant for number of days, the absence of blood or semen stains on the cloths would not be of much significance. In fact the evidence of PW-2 would clearly give indication about the age of the prosecutrix. Her menstruation had not yet started. Axillary hair were not well developed. Only few thin hair were present. The public hairs were also not well developed. Labia minora and labia majora were thin and were not fully developed. Hymen was red and swollen in posterior part with pain in it. There was small tear present in the posterior lateral part of hymen, which was bleeding on touch. The prosecutrix complained of pain during her examination. Accordingly, PW-2 opined that clinically examination findings were suggestive of possibility of sexual intercourse. This evidence coupled with the oral account given by prosecutrix, would be sufficient assurance to lend credence to the case of prosecution. The learned counsel appearing for the appellant could not point out to any evidence or material, which would either suggest or show that prosecutrix was not subjected to intercourse. The line of defence only is that the appellant has been falsely implicated at the instance of the brick-kiln owner, who owed money to the appellant which the appellant was demanding. This theory appears rather farfetched. The complainant can not be expected to readily agree to put honour of his twelve years daughter at the stake by making such false allegations at the

instance of brick-kiln owner. There is no other material available on record to support this plea raised by the appellant. Accordingly, there is no merit in the appeal and the same deserves to be dismissed.

Faced with this situation, the counsel for the appellant pleads that the appellant has suffered enough. He is in custody ever since the date of the incident and as such by now he has undergone a period of 5-1/2 years actual sentence out of ten years rigorous imprisonment awarded to him. He thus pleads that the sentence awarded to the appellant be reduced to period already undergone. In support of his submission, the counsel would say that though it is not so pleaded, but prosecutrix appears to be a consenting party. He, however, would not dispute that the consent in this case would be immaterial considering the age of the prosecutrix. The appellant has not raised any dispute about the age as stated and proved by the prosecutrix before the trial court. The counsel, however, points out that as per the version, the prosecutrix was recovered after fifteen days of the incident. She had remained with the appellant for such a long period and could well have raised alarm or hue and cry if she had been forcibly taken or so kept. Though the prosecutrix had tried to convey that she was always kept gagged and not permitted to raise alarm, but this aspect, according to the counsel for the appellant, is rather over stretched. He has accordingly prayed that by taking all these aspects into consideration, case of some leniency in the award of sentence may be made out. On the other hand, State counsel submits that the minimum sentence that is awardable for such offences is seven years and to award a sentence of lesser a duration than this period, the court is required to give reasons for

doing so.

I do not find any special reason which may warrant any consideration sentencing the appellant less than the minimum prescribed sentence under the section. He has enticed away a young girl of 12 years. In terms of Section 376(2)(g), minimum sentence of 10 years rigorous imprisonment is prescribed for an offence of rape of woman under 12 years of age. That being not the case, the minimum punishment in present case is 7 years. Ofcourse the proviso lays down that for adequate and special reasons, a sentence less than the minimum prescribed can be imposed. Special or adequate reasons for imposing less than minimum sentence would depend on number of factors. The facts and circumstances in each case, the nature of the crime, the conduct of the accused, the motive for crime etc. are some of the features which are relevant in the sentencing calculus. However, there may be justification for modulating the sentence, yet conveying that it has to be stern. Sentencing efficacy in lust loaded crime can not be simply assumed by award of long incarceration. It has been viewed that such remedy may lead to sex starvation, criminal companionship and various other versatile vices which tends to often aggravate the malady. One can not be oblivious of the fact that the prison system that it is, converts a man into a hardened delinquent. Prison severity, as such, need not be blindly followed, as that may result in restoring a potentially hardened man to the society.

Keeping all these factors in mind, some interference may be called for without conveying any message of any undue sympathy. Legislation has prescribed minimum sentence in such

cases. If there are no reasons to award less than the minimum prescribed sentence, then there are no reasons indicating any factor showing any aggravating factors. Accordingly, while dismissing the appeal, the sentence awarded to the appellant is reduced to seven years rigorous imprisonment, which would meet the ends of justice. Subject to reduction in sentence, the appeal is without merit and is dismissed.

November 13, 2007 (RANJIT SINGH)
ramesh JUDGE